

**IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE IN AND
FOR KENT COUNTY**

WOODMILL APARTMENTS,

Plaintiff Below,
Appellee,

v.

C.A. No. JP16-22-007307

NAKIYA TATE

Defendant Below.
Appellant.

TRIAL DE NOVO

Appearances:

Woodmill Apartments, represented by David C. Zerbato, Esq.
Nakiya Tate, pro se

ORDER

Wilson, J.
Hicks, J.
Alston-Jackson, J.

On May 12, 2023, this Court, consisting of the Honorable Kevin L. Wilson, the Honorable Jamie Hicks and the Honorable Nicole Alston-Jackson, acting as a special court, pursuant to 25 *Del. C.* § 5717(a)¹ convened for a trial *de novo*² in reference to a Landlord-Tenant Summary Possession petition filed by Woodmill Apartments ("Plaintiff") against Nakiya Tate ("Defendant") concerning non-payment of rent.

TESTIMONY AND EVIDENCE

Plaintiff's, Holly North, Property Manager, provided sworn testimony, and testified to both her relationship with Defendant, as property manager and Defendant's tenancy history. Defendant offered no objection to entry of exhibits. Ms. North acknowledged Plaintiff's Exhibit 1 as the lease agreement between parties, which indicates specific terms of Defendant's tenancy, which include her unit description, 1300 S. Farmview Drive, C-13, monthly rental amount of \$1,450.00 (monthly rent, plus \$10 trash fee), and the lease initiation date of November 1, 2022

¹ 25 *Del. C.* § 5717(a). *Nonjury trials*. With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote...

² *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black's Law Dictionary 435 (6th ed. 1990).

for one year. Ms. North further testified that a five (5) day letter with proof of mailing, Plaintiff's Exhibit 2, was issued on November 7, 2022, noticing Defendant of rental arrearage in the amount of \$1,363.86 (monthly rent and late fees). Ms. North further testified by reference of a Rent Ledger, Plaintiff's Exhibit 3, that as of May 2, 2023, Defendant's rental arrearage had increased to \$7,761.25, showing the last payment received on January 16, 2023.

Defendant under oath, argued that she began to make complaints to the leasing office beginning in October 2022, with regard to her dissatisfaction with conditions of the unit, including faulty key entry to her apartment unit and unknown individuals picking the lock to her unit door, but was unsuccessful seeking a resolve. Defendant requested entry of a complaint letter sent to the leasing office, Defendant's Exhibit 1, following scheduling of the trial. Plaintiff offered objection as to probative value. The Court allowed entry to establish reference to Defendant's argument.

DECISION

This is a case of non-payment of rent. It is undisputed that a landlord-tenant relationship existed between parties, as Plaintiff presented an executed lease agreement, and Defendant freely acknowledged same during testimony. Testimony presented between parties reveals that Defendant is in rental arrears for several months and has not paid perceivably because she has been dissatisfied with defective areas of her unit dwelling. What remains in controversy is whether Defendant may withhold rent because of her dissatisfaction with the rental unit. The Court has reviewed relevant testimony and evidence and determined broadly the answer to that question is no.

Pursuant to §5302 of the Landlord-Tenant Code, **Tenant remedy; termination at the beginning of term. (c)**, if there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition; and if not remedied within 15 days, the tenant may terminate the rental agreement and seek relief in this court. However, Defendant instead withheld 100% rent of her own volition, without due regard for application of the code. By reference, in accordance with §5308 of the Landlord-Tenant Code, the tenant may withhold two-thirds of rent relating to lack of essential services, which include substantial failure to provide hot water, heat, water, or electricity. Defendant did not testify to any lack thereof in this regard.

For the foregoing reasons, this Court finds in favor of **PLAINTIFF**. Plaintiff may request immediate writ of possession.

Judgment: \$7,761.25 (includes: rent, trash, late fees)

Possession

Per Diem rent until possession

Post-Judgment interest: 10.25%

Decision announced in open court.

IT IS SO ORDERED, this 23rd day of **June, 2023**.

For the Court,

/s/ Nicole Alston-Jackson (SEAL)
Hon. Nicole Alston-Jackson

VIEW YOUR CASE ONLINE: <https://courteconnect.courts.delaware.gov>